IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 272 DB of 2003
Date of decision: 16-10-2006

Devender Singh .....Appellant

Versus

The State of Haryana .....Respondent

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE R.S.MADAN

Present: Mr. Amandeep Agnihotri, Advocate,
for the appellant.

Shri S.S.Goripuria, D.A.G. Haryana.

K.S.GAREWAL,J.

At around mid day on April 2, 2001 Jugal (Kishore) Ahuja was travelling on his scooter HR -51/E-6833 in a crowded street in S.G.M. (Sanjay Gandhi Memorial) Nagar, Faridabad. Devender Singh appellant was sitting on the pillion of the said scooter. All of a sudden Devender Singh took out his pistol and shot Jugal Ahuja in the head. Jugal Ahuja fell down and died while Devender Singh escaped. Later Devender Singh was arrested and tried for the murder of Jugal Ahuja. After trial Devender Singh was found guilty by learned Additional Sessions Judge, Faridabad vide judgment dated December 10, 2002 and sentenced to imprisonment for life and to pay fine of Rs.10,000/-. He was also convicted under Section 25 of the Arms Act and sentenced to rigorous imprisonment for three years and to pay fine of Rs.1,000/-. There were sentences in default of payment. Both sentences were directed to run concurrently. Devender Singh has filed this appeal against his conviction and sentence.

The above occurrence had taken place at about 12-30 P.M. and was witnessed by Jugal Kishore's uncle Kewal Ram (PW-1) and Om Parkash (PW-2). Kewal Ram was on his way to buy medicines from Arora Medical Store when he saw Jugal Ahuja and Devender Singh coming on a scooter from the opposite side when the occurrence took place. At that very time Om Parkash was present in a nearby shop. Therefore, both saw Devender Singh shooting Jugal Ahuja in the head. The matter was reported to the police by Kewal Ram whose statement was recorded at 2-50 P.M. Special Report was delivered to the learned Magistrate at 5-45 P.M.

Investigation was taken up by ASI Jai Singh (PW-8) who had reached the spot on receiving telephonic message regarding the firing near Mehta Sweets in S.G.M. Nagar, Faridabad. Investigator prepared the rough site plan of the place of the occurrence and had the dead body photographed by Sanjay (PW-6). The scooter on which the deceased and the appellant were riding was found at the spot and was also taken into possession. Chappels of the deceased were found lying nearby and were taken into possession. Inquest report was prepared and thereafter dead body was sent for post mortem examination which was conducted by a Medical Board consisting of Dr. N.K. Sharma (PW-7) and others. The Medical Board found the following injuries on the person of the deceased:-

"1. Wound of entry in the occipital region 2cm from mid-line in between right mastoid and occipital protuoence. Hair were burnt, margins of the wounds lacerated and inverted. Size was 3.5 x 2cm and probe was going inside cranical cavity (skull) corresponding bone to the wound was missing. Wound of exit on right parietal region 4.5 cm from upper margin of right ear,

size 2.5 x 2cms. Margins were everted. Corresponding bone was fractured. A large fragment of fractured bone of skull was lying under the scalp.

Internal dissection—There was a large haemotoma in area of 12 cm all around the wound of entry. Lot of clotted blood was present in the cranial cavity between the wound of entry and wound of exit. Occipital bone was fractured. Layers of brain were lacerated. Brain matter i.e. cerepellar and cerebral cortex on right side was lacerated and damaged through out the path of pallet/bullet. Vessels were also torn. Parietal bone was fractured at the wound of exit. There was a large haemotoma underlying the scalp and skull bone in the parietal region. Membrane of brain corresponding to wound of exit were lacerated."

In the opinion of the Board the cause of death was shock and hemorrhage and injury to brain. Injury has been caused by fire arm which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature.

Later on in the evening of April 8, 2001, the investigation was handed over by ASI Jai Singh (PW-8) to Inspector Dharambir Singh (PW-9). Devender Singh was arrested on April 13, 2001. On interrogation he disclosed that he had concealed his pistol in the house of his aunt Ram Kali situated in Dabua colony, Faridabad. On the basis of his disclosure statement a country made pistol of .315 bore alongwith an empty cartridge, one shirt and pant stained with blood were recovered which were taken into possession. The pistol and cartridge were sent for forensic examination to

Forensic Science Laboratory, Madhuban. The Forensic Scientists also received other forensic evidence including blood stained earth and clothes of the deceased as well blood stained clothes of the accused. The Forensic Scientist did not make any significant discoveries but reported that the empty cartridge case found in the country made pistol had been fired by that pistol itself. It was also reported that the recovered pistol was in working order. After completion of the investigation accused was sent up for trial.

At the trial charges were framed under Section 302 I.P.C. and 25 of the Arms Act. Accused pleaded not guilty and claimed trial. Prosecution examined Kewal Ram (PW-1), Om Parkash (PW-2), Jagan Nath (PW-3), Dalip Satija (PW-4), HC Hari Chand (PW-5), Sanjay (PW-6), Dr. N.K. Sharma (PW-7), ASI Jai Singh (PW-8), Inspector Dharambir Singh (PW-9), C. Virender Singh (PW-10) and C. Manoj Kumar (PW-11). Accused was examined without oath under Section 313 Cr.P.C. He denied that accused was a tenant in the house of Jagan Nath (PW-3) but denied the other items of evidence which were presented by the prosecution at the trial. He pleaded innocence and false implication. He was called up to lead evidence but did not examine any witness. Learned Additional Sessions Judge found the accused guilty under Section 302 I.P.C. and Section 25 of the Arms Act. He was thus convicted and sentenced.

We have gone through the record of the case with the help of the learned counsel for the appellant and learned Deputy Advocate General and have also heard respective counsel at length. We find that Jugal Ahuja was done to death with a single shot to the head while he was driving his scooter. The dead body and the scooter had been found lying on a street in a crowded market. Devender Singh appellant was not a stranger to Kewal

Ram and Om Parkash. Devender Singh was a tenant of their relative Jagan Nath in S.G.M. Nagar. The room had been rented for one year. After the year was over, he had been asked to vacate but he started making excuses. Jagan Nath asked his brother-in-law Jugal Ahuja to speak to Devender Singh but no serious quarrel had occurred between the two of them. On April 8, 2001 Jugal Ahuja had come to Jagan Nath on his scooter and had asked Devender Singh to vacate the room. As Jugal Ahuja was about to leave, Devender Singh asked him for a lift and Jugal Ahuja obliged, without realising that very soon thereafter Devender Singh would shoot him.

The evidence of the eye witnesses is categoric and forthright. They had both seen the deceased and the accused on the scooter. They heard the gun shot and saw the scooter falling to the ground. Thereafter they saw Devender Singh running towards street No.2. The deceased was a close relation of Kewal Ram (PW-1) being his sister's son. Om Parkash (PW-2) had also seen the occurrence. He had seen the deceased and the accused on a scooter, and had also seen Devender Singh pulling out a “revolver” and firing a shot behind Jugal Ahuja's head. In cross-examination, it transpired that Om Parkash (PW-2) had also known Devender Singh as he was on visiting terms with Devender Singh's landlord Jagan Nath Arora, who was also his brother-in-law.

The main witnesses of the occurrence were thoroughly cross-examined by the learned defence counsel but their credibility and veracity remained unshaken. The evidence of Jagan Nath (PW-3) as well of the two eye witnesses was accepted without any hesitation.

The accused was arrested on April 13, 2001 when he was produced at the Police Station. He was interrogated in the presence of Dalip

Singh Satija (PW-4) and Girdhari Lal had led to the recovery of country made pistol of .315 bore alongwith a fired cartridge. Both items were taken into possession. Thus the police had not only succeeded in arresting the accused within five days of the occurrence but also succeeded in recovering the weapon of offence.

Our conclusion is that the eye witnesses were truthful. Before the occurrence the deceased had gone to the room taken by the accused to ask him to vacate. When the deceased was returning the accused asked for a lift and hopped on his scooter with the intention to kill him. The scooter was found lying at the spot near the dead body. Medical evidence corroborated the eye witness account. The accused had a motive of sorts because he did not want to leave while the deceased had been pressuring himself to do so. The prosecution case was fully proved from all angles. The arrest of the accused also led to the recovery of the weapon.

In view of the above discussion, we find no merit in this appeal and the same is hereby dismissed.

(K.S.GAREWAL)
JUDGE

(R.S.MADAN)
JUDGE

October 16, 2006
RSK